

JS 44 (Rev. 12/07) (cand rev 1-16-08)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

**I. (a) PLAINTIFFS**

San Francisco Baykeeper, a non-profit corporation

**DEFENDANTS**

County of San Mateo, and Burlingame Hills Sewer Maintenance District

(b) County of Residence of First Listed Plaintiff San Francisco  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant San Mateo  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Daniel Cooper  
Lawyers for Clean Water, Inc.  
1004 O'Reilly Avenue  
San Francisco, CA 94129

Attorneys (If Known)

E-filing

BZ

ADR

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	PERSONAL INJURY	PERSONAL INJURY	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury—Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881		<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 630 Liquor Laws	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage Product Liability		<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract			<b>LABOR</b>	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability		<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
	<b>CIVIL RIGHTS</b>	<b>Habeas Corpus:</b>	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 530 General	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 865 RS1 (405(g))	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 790 Other Labor Litigation		<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 550 Civil Rights		<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 555 Prison Condition	<b>IMMIGRATION</b>	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other		<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights		<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		
			<input type="checkbox"/> 465 Other Immigration Actions		

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

33 USC §§ 1251 et sec (Clean Water Act)

Brief description of cause:

Citizen enforcement for violations of Clena Water Act prohibitions on discharging pollutant to waters of the United States

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23  
☐ DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)**☒ SAN FRANCISCO/OAKLAND☐ SAN JOSE

DATE

8/19/08

SIGNATURE OF ATTORNEY OF RECORD

008-3951/BZ

ORIGINAL

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 SAN FRANCISCO BAYKEEPER

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

CV 08

3951

SAN FRANCISCO BAYKEEPER, a non-profit  
 corporation,

Plaintiff,

v.

COUNTY OF SAN MATEO, and BURLINGAME  
 HILLS SEWER MAINTENANCE DISTRICT;

Defendants.

Civil Case No.:

**COMPLAINT FOR DECLARATORY  
 AND INJUNCTIVE RELIEF AND  
 CIVIL PENALTIES**

**(Federal Water Pollution Control Act,  
 33 U.S.C. §§ 1251 *et seq.*)**

San Francisco Baykeeper (Baykeeper) by and through its counsel, hereby allege:

**I. JURISDICTION AND VENUE**

1. This is a civil suit brought under the citizen suit enforcement provisions of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (the Clean Water Act or the CWA). This Court has subject matter jurisdiction over the parties and subject matter of this action pursuant to section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), and 28 U.S.C. § 1331 (an action for declaratory and injunctive relief arising under the Constitution and laws of the United States).

2. On June 5, 2008, Baykeeper sent a 60-day notice letter (hereinafter referred to as Notice Letter) to San Mateo County and the Burlingame Hills Sewer Maintenance District governing body – the San Mateo County Board of Supervisors – regarding Defendants’ violations of the Clean Water Act and Baykeeper’s intention to file suit against Defendants. Pursuant to section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), Baykeeper also served the Notice Letter on the Administrator of the United States Environmental Protection Agency (EPA), the Administrator of EPA Region IX, the Executive Director of the State Water Resources Control Board (State Board), the Executive Officer of the Regional Water Quality Control Board, San Francisco Bay Region (Regional Board), and the United States Attorney General. The Notice Letter is incorporated herein by reference.

3. More than sixty days have passed since the Notice Letter was served on the Defendants and the required State and Federal agencies. Baykeeper is informed and believes, and thereon alleges, that neither the EPA nor the State of California has commenced or is diligently prosecuting an action to redress the violations alleged in this complaint.

4. Venue is proper in the Northern District of California pursuant to section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial district.

**II. INTRADISTRICT ASSIGNMENT**

5. Pursuant to Local Rule 3-2(c), intradistrict assignment of this matter to the San Francisco Division of the Court is appropriate in that the events or omissions which give rise to Baykeeper’s claims occurred in San Mateo County. In addition, many of Baykeeper’s members reside in the City and County of San Francisco and the County of San Mateo. No event or omission giving rise to

1 Baykeeper's claims occurred in any other Division of this Court.

2 **III. INTRODUCTION**

3 6. The violations alleged herein concern unpermitted discharges of raw sewage and  
4 discharges from the sewage collection system in and around the unincorporated community of  
5 Burlingame Hills to the municipal separate storm sewer system (MS4), to area creeks and streams, and  
6 to San Francisco Bay.

7 7. The specific CWA violations at issue are: (1) discharges of pollutants to waters of the  
8 United States without NPDES Permit authorization in violation of CWA section 301(a), 33 U.S.C. §  
9 1311(a); and (2) violations of National Pollutant Discharge Elimination System (NPDES) Permit No.  
10 CAS0029921, Order No. R2-2003-0023, amending Order No. 99-059 (hereinafter the MS4 Permit) in  
11 violation of CWA section 301(a), 33 U.S.C. § 1311(a).

12 8. The Burlingame Hills sewage collection system is a satellite system where wastewater is  
13 conveyed through sewer mains to a wastewater treatment plant operated by the City of Burlingame.  
14 Burlingame Hills Sewer Maintenance District and/or San Mateo County do not own or operate a  
15 wastewater treatment plant that treats sewage collected in Burlingame Hills.

16 9. The MS4 Permit regulates municipal storm water discharges to and from the storm drain  
17 system within the boundaries of Burlingame Hills ("Burlingame Hills MS4"). As explained further  
18 below, the Burlingame Hills MS4 is owned, operated, and/or maintained by the County of San Mateo .  
19 The Burlingame Hills MS4 consists of numerous storm drain inlets that lead to underground storm  
20 drain pipes, which in turn, discharge to waters of the United States.

21 **IV. PARTIES**

22 10. Plaintiff Baykeeper is a non-profit public benefit corporation whose mission is to protect  
23 and enhance the water quality of the San Francisco Bay-Delta Estuary and its tributaries for the benefit  
24 of its ecosystems and the surrounding human communities. Baykeeper accomplishes its mission  
25 through education, advocacy, restoration, and enforcement. Baykeeper's office is located at 785  
26 Market Street, Suite 850, in San Francisco, California.

27 11. The discharge of sewage in Burlingame Hills is a threat to human health and the  
28 environment, and adversely impacts Baykeeper's members' use and enjoyment of water bodies in and



1 around the Burlingame Hills area, including San Francisco Bay.

2 12. Baykeeper's members use and enjoy the beaches and waters in and around Burlingame  
3 Hills, including, but not limited to, Mills Creek, Easton Creek, Central San Francisco Bay, and the  
4 greater San Francisco Bay and its tributaries (these waters are collectively hereinafter referred to as the  
5 Receiving Waters).

6 13. Baykeeper's members use and enjoy San Francisco Bay area waters for recreational,  
7 scientific, aesthetic, educational, conservation and commercial purposes. Specifically, Baykeeper's  
8 members sail, swim, windsurf, picnic, fish, hike and enjoy the wildlife in and around the Receiving  
9 Waters.

10 14. Baykeeper's members' use and enjoyment of the Receiving Waters, and all tributaries to  
11 such waters (given that pollutants discharged to tributaries will flow into the Receiving Waters directly  
12 used by Baykeeper's members), has been and continues to be adversely impacted by ongoing sewer  
13 overflows and discharges of storm water contaminated with sewage to the Receiving Waters. The  
14 discharge of pollutants to the Receiving Waters has deleterious effects on those water bodies.  
15 Degradation of water quality and harm to aquatic life in any of the Receiving Waters impairs  
16 Baykeeper's members' use and enjoyment of those waters.

17 15. The interests of Baykeeper's members have been, are being, and will continue to be  
18 adversely affected by Defendants' failure to comply with the Clean Water Act. Baykeeper has no  
19 other adequate remedy at law.

20 16. Defendant County of San Mateo is a political subdivision of the State of California.  
21 Defendant County of San Mateo's Department of Public Works operates the Burlingame Hills sewage  
22 collection system and owns and operates the Burlingame Hills MS4. San Mateo Public Works  
23 personnel respond to citizen complaints of SSOs, and conduct routine maintenance, cleaning, and  
24 inspection of the Burlingame Hills sewage collection system and the Burlingame Hills MS4.

25 17. Defendant Burlingame Hills Sewer Maintenance District is a special district as defined by  
26 California Government Code section 16271(d). The San Mateo County Board of Supervisors serves as  
27 the governing board of the Burlingame Hills Sewer Maintenance District and San Mateo County's  
28 Department of Public Works maintains the Burlingame Hills sewage collection system. Baykeeper is

1 informed and believes, and thereon alleges, that the Burlingame Hills Sewer Maintenance District  
2 owns and/or operates the Burlingame Hills sewage collection system.

3 **V. STATEMENT OF FACTS**

4 **A. Burlingame Hills Sanitary Sewage Collection System**

5 18. Burlingame Hills is located on the San Francisco Peninsula. The boundaries are  
6 approximately Canyon Drive and Summit Drive in the south, Skyline Boulevard in the west, Hillside  
7 Drive and Adeline Drive in the north, and Alvarado Avenue in the east.

8 19. Burlingame Hills is one of ten sewer/sanitation districts for which the San Mateo County  
9 Board of Supervisors serves as the governing body. The San Mateo County Board of Supervisors sets  
10 the sewer rates for property owners in the Burlingame Hills area.

11 20. Baykeeper is informed and believes, and thereon alleges, that the Burlingame Hills  
12 sewage collection system is a gravity system, with approximately 5 miles of 6-inch to 8-inch diameter  
13 vitrified clay pipes that are over 50-years old, and 2.2 miles of sewer mains located in easements.

14 21. Baykeeper is informed and believes, and thereon alleges, that the Burlingame Hills  
15 sewage collection system has three main trunk sewers, which divides Burlingame Hills into three  
16 major drainage areas. The City of Burlingame receives the wastewater at the three trunk sewers and  
17 transfers it to the City of Burlingame waste water treatment plant (WWTP), which processes the  
18 wastewater prior to discharging it to the San Francisco Bay.

19 22. Based upon reports submitted by Defendants, Baykeeper alleges that Defendants have  
20 spilled sewage from sanitary sewer overflows (SSOs) from the Burlingame Hills sewage collection  
21 system on at least 30 separate occasions since June 5, 2003.

22 23. Baykeeper is informed and believes, and thereon alleges that these sewage discharges are  
23 ongoing.

24 24. Based upon reports submitted by Defendants, Baykeeper alleges that sewage from SSOs  
25 has repeatedly reached the Receiving Waters through the Burlingame Hills storm sewer system. The  
26 Burlingame Hills storm sewer system discharges directly to area waters, including Mills Creek and  
27 Easton Creek, which are tributaries of the San Francisco Bay. Therefore, Defendants' discharge to the  
28 storm drain will eventually drain to the San Francisco Bay. As such, Defendants' discharges of

1 sewage to storm drains reach Receiving Waters.

2 25. Baykeeper is informed and believes, and thereon alleges, that Defendants discharge  
3 sewage to area sidewalks and streets, which exposes members of Baykeeper (as well as members of  
4 the general public) to substantial health risks.

5 26. Baykeeper is informed and believes, and thereon alleges, that - due to the lack of an  
6 adequate monitoring program to detect, report, and address SSOs and their impacts – Defendants have  
7 experienced significantly more SSOs than they have reported.

8 27. Baykeeper is informed and believes, and thereon alleges, that Defendants have taken  
9 inadequate steps to eliminate SSOs; steps which would include for example improving the decrepit,  
10 outdated, and poorly operated and maintained collection system. Because Defendants have failed to  
11 undertake appropriate and adequate measures, Defendants' sewage discharges will continue into the  
12 future.

13 28. Based on Defendants' high rate of SSOs, Baykeeper is informed and believes, and  
14 thereon alleges, that the Burlingame Hills sewage collection system is deteriorating and that deferral of  
15 repairs will allow the continued discharge of raw sewage to the Receiving Waters. Every day that  
16 Defendants have discharged and continue to discharge untreated sewage into area Receiving Waters is  
17 a separate and distinct violation of the CWA.

18 **B. Burlingame Hills MS4**

19 29. The MS4 Permit regulates the County of San Mateo's municipal storm water discharges  
20 in the Burlingame Hills area (as well as other MS4 systems in San Mateo County). The Burlingame  
21 Hills MS4 consists of numerous storm drain inlets that lead to underground storm drain pipes which in  
22 turn are directed to San Francisco Bay without treatment.

23 30. The County of San Mateo has joined with twenty cities and towns in San Mateo County  
24 to form the San Mateo Countywide Stormwater Pollution Prevention Program ("STOPP"). STOPP  
25 submitted a NPDES permit application and was granted a NPDES permit in 1993, which was reissued  
26 in 1999 and amended in 2003. STOPP's NPDES permit regulates discharges into and out of the  
27 Burlingame Hills MS4. Specifically, the County of San Mateo is required to prohibit the discharge of  
28 non-storm water into the storm drain system. Further, the MS4 Permit contains Receiving Water

1 Limitations, including prohibitions on discharges that cause deleterious effects on aquatic biota,  
2 wildlife, or waterfowl, that render any of these unfit for human consumption, or that cause or  
3 contribute to violations of water quality standards.

4 31. Raw sewage in the form of SSOs is discharged into the Burlingame Hills MS4 from the  
5 Burlingame Hills sewage collection system. Baykeeper is informed and believes, and thereon alleges,  
6 that sewage spills from the Burlingame Hills sanitary sewage collection system regularly enter the  
7 Burlingame Hills MS4. A separate violation of the MS4 Permit occurs each time raw sewage is  
8 discharged into the Burlingame Hills MS4.

9 **C. Impacts to the Receiving Waters**

10 32. San Francisco Bay is an ecologically sensitive water body and a defining feature of  
11 Northern California. San Francisco Bay is an important and heavily used resource, with special  
12 aesthetic and recreational significance for people living in the surrounding communities. Aquatic  
13 sports are very popular in the Bay Area year-round. The San Francisco Bay shoreline has numerous  
14 highly valued lagoons with beaches and public access that offer unique recreational opportunities for  
15 swimmers, kayakers, windsurfers, and kiteboarders. The large-scale urbanization of the Bay Area  
16 makes these recreational and aesthetic uses even more important to the quality of life of Bay Area  
17 residents.

18 33. San Francisco Bay's water quality is impaired and continues to decline. The Bay's once-  
19 abundant and varied fisheries and species have been drastically diminished by pollution. Much of the  
20 wildlife habitat of the Bay has also been degraded.

21 34. Spills of raw sewage and discharges of sewage-contaminated storm water harm San  
22 Francisco Bay and pose a serious risk to fisheries, wildlife habitat, and human health. In addition to  
23 human waste and bacteria, SSOs contain chemicals that cause cancer or reproductive toxicity. These  
24 chemicals come from solvents, detergents, cleansers, inks, pesticides, paints, pharmaceuticals, and  
25 other chemicals used by households and businesses and then discarded to sewage collection systems.  
26 High concentrations of these pollutants are typically found in discharges of raw sewage.

27 35. The intensive use of San Francisco Bay for commercial and sport fishing, shellfish  
28 harvesting, and water-contact recreation increases the likelihood that people will come into direct



1 contact with spilled sewage and the pollutants it contains. Sewage pollution also affects people who  
2 eat fish caught in the Bay. Persistent toxic chemicals present in sewage, such as polybrominated  
3 diphenyl ethers, accumulate in San Francisco Bay organisms and are concentrated in the San Francisco  
4 Bay's food web, which means that concentrations of these contaminants are magnified in fish and birds  
5 farther up the food chain and may ultimately be transferred to human consumers. Contamination of  
6 fish is particularly damaging to minority and poor people, who typically eat a greater-than-average  
7 amount of fish from the Bay.

8 36. SSOs that do not directly reach San Francisco Bay still pose significant health risks by  
9 depositing raw sewage in public streets, public buildings and grounds, and private yards and homes.  
10 SSOs contain large concentrations of bacteria, viruses, mold spores, and protozoa. Exposure to raw or  
11 partially treated sewage can cause a variety of health problems, including gastroenteritis, respiratory  
12 illness, ear, nose, and throat problems, and skin rashes. Mold spores can establish an ecological niche  
13 when they are carried onto a homeowner's property during a sanitary sewer overflow, creating an  
14 ongoing health risk from chronic exposure. Residential sewage overflows diminish property values  
15 and impose severe nuisance on local residents.

## 16 VI. LEGAL BACKGROUND

### 17 A. The Clean Water Act

18 37. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant  
19 into waters of the United States unless the discharge complies with various enumerated sections of the  
20 CWA. Among other things, section 301(a) prohibits discharges that violate or are not authorized by  
21 the terms of a NPDES permit issued pursuant to section 402 of the CWA, 33 U.S.C. § 1342. 33 U.S.C.  
22 § 1311(a).

23 38. Clean Water Act section 402(p), 33 U.S.C. § 1342(p), establishes a framework for  
24 regulating municipal storm water discharges under NPDES permits. Section 402(p) of the CWA  
25 requires a NPDES permit for storm water discharges from a MS4 to waters of the United States. 33  
26 U.S.C. § 1342(p).

27 39. Section 505(a)(1) of the CWA provides for citizen enforcement actions against any  
28 "person," including individuals acting in their official state capacity, for violations of NPDES permit

requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and 1362(5).

40. An action for injunctive relief under the CWA is authorized by section 505(a) of the CWA. 33 U.S.C. §1365(a). Violators of the CWA are also subject to an assessment of civil penalties of up to \$27,500 per day per violation of the CWA for violations of the CWA occurring prior to March 15, 2004 and \$32,500 for all violations occurring on or after March 15, 2004. 33 U.S.C. § 1319(d) and 40 C.F.R. §§ 19.1 - 19.4.

41. The CWA also authorizes the award of reasonable attorneys' fees and costs (including witness and consultant fees). 33 U.S.C. § 1365(d).

#### **B. MS4 Permit Requirements**

42. Clean Water Act section 402(p), 33 U.S.C. § 1342(p), establishes a framework for regulating municipal storm water discharges under NPDES permits. Section 402(p) of the CWA requires a NPDES permit for storm water discharges from a municipal separate storm sewer system to waters of the United States. The MS4 Permit regulates the Burlingame Hills municipal storm water discharges (as well as discharges from other MS4 systems in San Mateo County). The Burlingame Hills MS4 consists of numerous storm drain inlets that lead to underground storm drain pipes, which in turn discharge to San Francisco Bay.

43. The MS4 Permit contains certain absolute prohibitions. Discharge Prohibition A.1 of the MS4 Permit prohibits the discharge of non-storm water (material other than storm water) into the Burlingame Hills MS4.

44. Further, the MS4 Permit contains Receiving Water Limitations, including prohibitions on discharges that cause deleterious effects on aquatic biota, wildlife, or waterfowl, that render any of these unfit for human consumption, or that cause or contribute to violations of water quality standards. *See* MS4 Permit, Receiving Water Limitations, B.1.e. and B.2.

#### **FIRST CAUSE OF ACTION**

#### **Claim Against County of San Mateo and Burlingame Hills Sewer Maintenance District for Discharges of Pollutants Without a NPDES Permit in Violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a)**

45. Plaintiff realleges, as if set forth fully herein, each and every allegation contained in the

preceding paragraphs.

46. The Burlingame Hills Sewer Maintenance District, as owner of the Burlingame Hills sewage collection system, and the County of San Mateo, as operator of the Burlingame Hills sewage collection system, have been discharging and continue to discharge untreated sewage from the Burlingame Hills sewage collection system into the Receiving Waters since at least June 5, 2003. At no point have either the County of San Mateo or the Burlingame Hills Sewer Maintenance District obtained a permit that authorizes the discharge of untreated sewage from the Burlingame Hills sewage collection system to waters of the United States. Therefore, each and every discharge of untreated sewage from the Burlingame Hills sewage collection system is a discharge in violation of CWA section 301, 33 U.S.C. § 1311.

47. The County of San Mateo and the Burlingame Hills Sewer Maintenance District have violated the discharge prohibition of CWA section 301(a) by discharging untreated sewage in the form of SSOs without NPDES permit authorization to waters of the United States on at least 30 separate occasions since 2003. Each SSO is a separate CWA violation and these violations are continuing.

48. Plaintiff Baykeeper is informed and believes, and thereon alleges, that the County of San Mateo and the Burlingame Hills Sewer Maintenance District have been underreporting the number of SSOs that take place from the Burlingame Hills sewage collection system and that the County of San Mateo and the Burlingame Hills Sewer Maintenance District lack an adequate monitoring program to detect, report, and address SSOs and their impacts. Baykeeper is informed and believes, and thereon alleges, that significantly more SSOs will be discovered through this enforcement action. Each additional SSO will be a separate CWA violation.

49. The County of San Mateo and the Burlingame Hills Sewer Maintenance District have taken inadequate affirmative steps to eliminate these CWA violations by improving the outdated, poorly operated, and poorly maintained sewage collection system. Because the County of San Mateo and the Burlingame Hills Sewer Maintenance District have failed to undertake appropriate and adequate measures, the CWA violations alleged herein will continue in the future.

50. Each day since June 5, 2003, that the County of San Mateo and the Burlingame Hills Sewer Maintenance District have discharged, and continue to discharge, untreated sewage and other

1 pollutants to waters of the United States without a NPDES permit authorizing such discharges is a  
2 separate and distinct violation of CWA section 301(a), 33 U.S.C. § 1311(a).

3 51. By committing the acts and omissions alleged above, the County of San Mateo and the  
4 Burlingame Hills Sewer Maintenance District are subject to an assessment of civil penalties pursuant  
5 to CWA sections 309(d) and 505(a), 33 U.S.C. §§ 1319(d) and 1365(a).

6 52. An action for injunctive relief under the Clean Water Act is authorized by CWA section  
7 505(a), 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above will  
8 irreparably harm Plaintiff and the citizens of the State of California, for which harm they have no other  
9 plain, speedy, or adequate remedy at law.

10 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

11 **SECOND CAUSE OF ACTION**

12 **Claim Against the County of San Mateo for Non-Storm Water Entering Municipal Separate**  
13 **Storm Sewer System in Violation of the MS4 Permit and Clean Water Act, 33 U.S.C. §**  
14 **1311(a)**

15 53. Plaintiff realleges, as is set forth fully herein, each and every allegation contained in the  
16 preceding paragraphs.

17 54. Discharge Prohibition A.1 of the MS4 Permit prohibits the discharge of non-storm water  
18 (material other than storm water) into the Burlingame Hills MS4.

19 55. The County of San Mateo has discharged or allowed the discharge of non-storm water  
20 into the Burlingame Hills MS4 in the form of SSOs from the Burlingame Hills sewage collection  
21 system. SSOs that enter the Burlingame Hills MS4 are not storm water but rather raw or inadequately  
22 treated sewage.

23 56. The County of San Mateo has reported to the Regional Board discharges of non-storm  
24 water to the Burlingame Hills MS4 system on at least 3 separate occasions. However, Baykeeper is  
25 informed and believes, and thereon alleges, that the County of San Mateo has allowed the discharge of  
26 non-storm water in the form of SSOs to the Burlingame Hills MS4 on more occasions than have been  
27 reported.

28 57. The County of San Mateo violates the MS4 Permit and section 301(a) of the CWA every



1 time a SSO from the Burlingame Hills sewage collection system enters the Burlingame Hills MS4.  
2 Accordingly, each day since June 5, 2003 that the County of San Mateo has failed to comply with the  
3 MS4 Permit is a separate and distinct violation of CWA section 301(a), 33 U.S.C. § 1311(a).

4 58. By committing the acts and omissions alleged above, the County of San Mateo is subject  
5 to an assessment of civil penalties pursuant to CWA sections 309(d) and 505(a), 33 U.S.C. §§ 1319(d)  
6 and 1365(a).

7 59. An action for injunctive relief under the Clean Water Act is authorized by CWA section  
8 505(a), 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would  
9 irreparably harm Plaintiff and the citizens of the State of California, for which harm they have no other  
10 plain, speedy, or adequate remedy at law.

11 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

12 **RELIEF REQUESTED**

13 60. Baykeeper respectfully requests that this Court grant the following relief:

14 a. A Court order declaring the County of San Mateo and the Burlingame Hills  
15 Sewer Maintenance District to have violated and to be in violation of section 301(a) of the CWA, 33  
16 U.S.C. § 1311(a), for their discharges of untreated sewage to waters of the United States, without a  
17 permit;

18 b. A Court order declaring the County of San Mateo to have violated and to be in  
19 violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), for violating the substantive and  
20 procedural requirements of the MS4 Permit and the Clean Water Act;

21 c. A Court order enjoining the County of San Mateo and the Burlingame Hills  
22 Sewer Maintenance District from discharging untreated sewage to waters of the United States without  
23 a permit, in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a);

24 d. A Court order enjoining the County of San Mateo from violating the substantive  
25 and procedural requirements of the MS4 Permit and the Clean Water Act;

26 e. A Court order assessing civil penalties against the County of San Mateo and the  
27 Burlingame Hills Sewer Maintenance District of up to \$27,500 per day per violation of the CWA for  
28 violations of the CWA occurring prior to March 15, 2004, and \$32,500 for all violations occurring on


1 or after March 15, 2004, for each violation of the CWA pursuant to sections 309(d) and 505(a), 33  
2 U.S.C. §§ 1319(d) and 1365(a).

3 f. A Court order awarding Baykeeper its reasonable costs of suit, including attorney,  
4 witness, and consultant fees, as provided for by sections 309(d) and 505(a) of the Clean Water Act, 33  
5 U.S.C. §§ 1319(d) and 1365(a);

6 g. Award such other relief as this Court may deem appropriate.

7 LAWYERS FOR CLEAN WATER, INC.

8  
9 Dated: August 19, 2008

10   
11 Daniel Cooper  
12 Drevet Hunt  
13 Attorney for Plaintiff  
14 San Francisco Baykeeper  
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